



# UNIVERSITY HOSPITAL

## Newark, New Jersey

### UNIVERSITY HOSPITAL POLICY

<b>SUBJECT:</b>	COMPLIANCE AND PRIVACY	<b>TITLE:</b>	DISCLOSURES OF PERSONALLY IDENTIFIABLE HEALTH INFORMATION TO BUSINESS ASSOCIATES		
<b>CODING:</b>	831-200-958	<b>ADOPTED:</b>	July 1, 2013	<b>AMENDED/ REVIEWED:</b>	

#### I. PURPOSE

To assure compliance with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) in relation to disclosures of Protected Health Information (PHI) and to entering into contracts with business associates.

#### II. ACCOUNTABILITY

Under the direction of the President/CEO, the Department Heads shall ensure compliance with this policy.

#### III. APPLICABILITY

This policy shall apply to disclosures to business associates of health information that is generated during provisions of health care to patients in any of UH patient care departments.

#### IV. DEFINITIONS

A. Protected Health Information (PHI): Protected health information means individually identifiable health information that relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual and identifies or could reasonably be used to identify the individual.

1. Except as provided in paragraph two (2) of this definition that is: a) transmitted by electronic media; b) maintained in electronic media; or c) transmitted or maintained in any other form or medium.
2. Protected health information excludes individually identifiable health information in: a) Education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g; b) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and c) Employment records held by a covered entity in its role as employer.

B. Business Associates - A person other than in the capacity of a member of the workforce that on behalf of UH, or any organized health care arrangement in which it participates, performs or assists in the performance of:

1. a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management and re-pricing; or
2. any other function or activity regulated by HIPAA regulations; or

3. provides legal, actuarial, accounting, auditing, consulting, data aggregation (as defined in CFR § 164.501), management, administrative, accreditation, or financial services to or for UH, or to or for an organized health care arrangement in which UH participates, where the provision of the service involves the disclosure of individually identifiable health information from such entities or arrangement, or from another business associate of such entities or arrangement, to the person.
- C. Workforce – Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UH, is under the direct control of such entity(ies), whether or not they are paid by UH.
  - D. HITECT ACT - Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act (ARRA) of 2009 that was enacted on February 17, 2009.

## V. REFERENCES

- A. 45 CFR 160.103(a), Code of Federal Regulations, Title 45, Part 164, Section 103, Subpart A, General Administrative Requirements, General Provisions, Definitions
- B. 45 CFR 164.501(e), Code of Federal Regulations, Title 45, Part 164, Section 501, Subpart E, Security and Privacy, Definitions, Privacy of Individually Identifiable Health Information
- C. 45 CFR 164.502(e), Code of Federal Regulations, Title 45, Part 164, Section 502, Subpart E, Security and Privacy, Uses and Disclosures of Protected Health Information: General Rules, Privacy of Individually Identifiable Health Information
- D. 45 CFR 164.504(e), Code of Federal Regulations, Title 45, Part 164, Section 504, Subpart E, Security and Privacy, Uses and Disclosures: Organizational Requirements, Privacy of Individually Identifiable Health Information
- E. 45 CFR 164.532 (d) and (e), Code of Federal Regulations, Title 45, Part 164, Section 532, Subpart E, Security and Privacy, Uses and disclosures: Organizational requirements, Privacy of Individually Identifiable Health Information and (d) Standard: Effect of Prior Contracts or Other Arrangements with Business Associates
- F. Section 13410(d) of the HITECH Act - Breach Notification Interim Final Regulation (74 FR 42740) - August 2009.
- G. Uses and Disclosures of Health Information  
With and Without an Authorization Policy #831-200-954

The following policy provides additional and related information:

- H. Standards for Privacy of Individually Identifiable  
Health Information Policy #831-200-963

## VI. POLICY

- A. Requirements:
  1. UH may only allow an individual or entity that is not part of its workforce that provides certain services to UH, or performs a function or activity on its behalf, to create or receive PHI without an authorization if the individual or entity:
    - a. meets the definition of a business associate as described above, and
    - b. enters into a written business associate contract with UH that meets the elements in 45 CFR 164.504(e) with UH.

2. To determine whether the person or entity is required to enter into a business associate contract, use the following guidelines with the attached flowchart (EXHIBIT A):
- a. No contract is needed with members of the workforce as defined in the definition. An independent contractor may be considered a member of the workforce if UH exercises supervision and control over the person as it would if the independent contractor was an employee.
  - b. A contract is necessary with persons who meet the definition of a business associate. (Since business associates access PHI without obtaining authorizations from the individuals to whom the PHI pertain, it is important that departments do not inappropriately classify a person as a business associate and therefore fail to obtain the required authorization).
    - i. A business associate is someone who does the following:
      - a). Performs or assists in the performance of a function or activity on behalf of UH, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, re-pricing, and any other function regulated by 45 CFR 164.504.  
  
For examples see EXHIBIT B for a list of specific types of persons, entities, and services that may qualify as a business associate provided that they meet all the elements discussed in this policy and procedure (i.e. the person will perform a function on behalf of UH that is not for the purposes of treatment only, etc).
      - b). Provides legal, auditing, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, paper recycling, shredder companies, transcription services, record copy services, offsite storage, information technology (IT) services where confidentiality, integrity or availability of ePHI (electronic PHI) is at risk, including software/hardware support of computing medical devices, and/or application services such email, web or database services or financial services for UH.
    - ii. Researchers - This is not a covered function for purposes of a business associate contract.
    - iii. Financial Transactions - No business associate agreement is required with a financial institution if it only processes consumer-conducted financial transactions in payment for health care.  
  
For example, a bank that processes credit or debit card transactions or clears checks for a hospital would not be considered a business associate. Although some PHI of the patient is disclosed to a financial institution in this example, such as the patient's identity and perhaps some health information (e.g., the procedure performed), these facts do not create a business associate relationship because the bank is not acting on behalf of UH in performing its functions. UH is not in the business of directly processing credit card transactions or cashing checks.
  - c. No contract is needed when the person or entity's function or service does not involve the use and disclosure of PHI, and where access to PHI by such persons would be de minimus or incidental, if at all.

For example, it is not required that UH enter into a contract with janitorial services, waste disposal of sealed materials, or equipment repair because the performance of such services does not involve the use and disclosure of PHI. In this case, any incidental contacts or disclosures is permitted under the federal privacy laws as an incidental disclosure, provided that reasonable safeguards are in place to prevent such disclosures.

- d. No contract is needed with another healthcare provider when the use or disclosure of the PHI is for treatment purposes.
  - i. If the relationship between the healthcare providers also includes involvement of PHI for operational or payment purposes, then a contract is necessary.

Examples: A physician, outside the workforce, serves as a medical director, or provides quality assurance or utilization management services through participation in hospital committees.
  - ii. For the definition and examples of the term treatment, payment, operations see EXHIBIT C.
- e. If it is unclear as to whether the business associate definition has been met or if it is met, whether a contract is necessary, contact General Counsel for assistance. Generally, if it continues to be unclear as to whether there is a business associate relationship, no information should be shared with the person or entity without the patient's authorization.

B. Responsibilities:

1. **Documentation of Business Associate Agreement**

UH will document the satisfactory assurances of protecting health information through a written contract with the business associate that meets the applicable requirements of the Health Insurance and Portability Act (HIPAA), 45 CFR 164.504(e) and 164.308(b).

All Hospital departments must assure that the individuals and entities identified above agree in writing to the provisions in the attached business associate contract prior to engaging their services or allowing them to encounter any PHI, see EXHIBIT D.

2. **Disclosure of Protected Health Information**

UH may disclose protected health information (PHI) to a business associate and may allow a business associate to create or receive PHI on its behalf, if satisfactory assurances are obtained that the business associate will appropriately safeguard the information.

3. **Responsibility of Individuals Authorized to Contract for University Hospital**

Any individual authorized to contract for UH, or who enters into any form of relationship on behalf of UH in which PHI is exchanged or in which another entity has access to PHI other than a relationship with another treating provider relating to the treatment of patients, is responsible to obtain satisfactory assurances of protecting health information through the approved business associate contracting process and with the approved business associate contract. Failure to meet this responsibility is subject to disciplinary action up to and including termination and/or dismissal.

4. UH must require business associates to return or destroy all PHI in its possession at the termination of the contract when feasible and permitted by law.

5. For purposes of internal monitoring of compliance with this policy and procedure, all departments must maintain a log of all arrangements with parties outside of the workforce accessing business associate arrangements including:
  - a. The name of the business associate.
  - b. The type of services provided to UH, or the function or activity performed on behalf of UH.
  - c. The date the business associate provisions were entered into.
  - d. The date the performance or services begin.
  - e. The type of protected health information that will be shared with the business associate.
  - f. Whether any of the protected health information will be shared through electronic means.
6. The above log must be made available to the Chief Compliance and Privacy Officer upon request.
7. Business associates may only use and disclose PHI to the extent that UH would be allowed to use and disclose the information. See UH policy, Uses and Disclosures of Health Information With and Without an Authorization, Policy #TBD. Only the information minimally necessary to complete the purpose of the service or function may be shared.

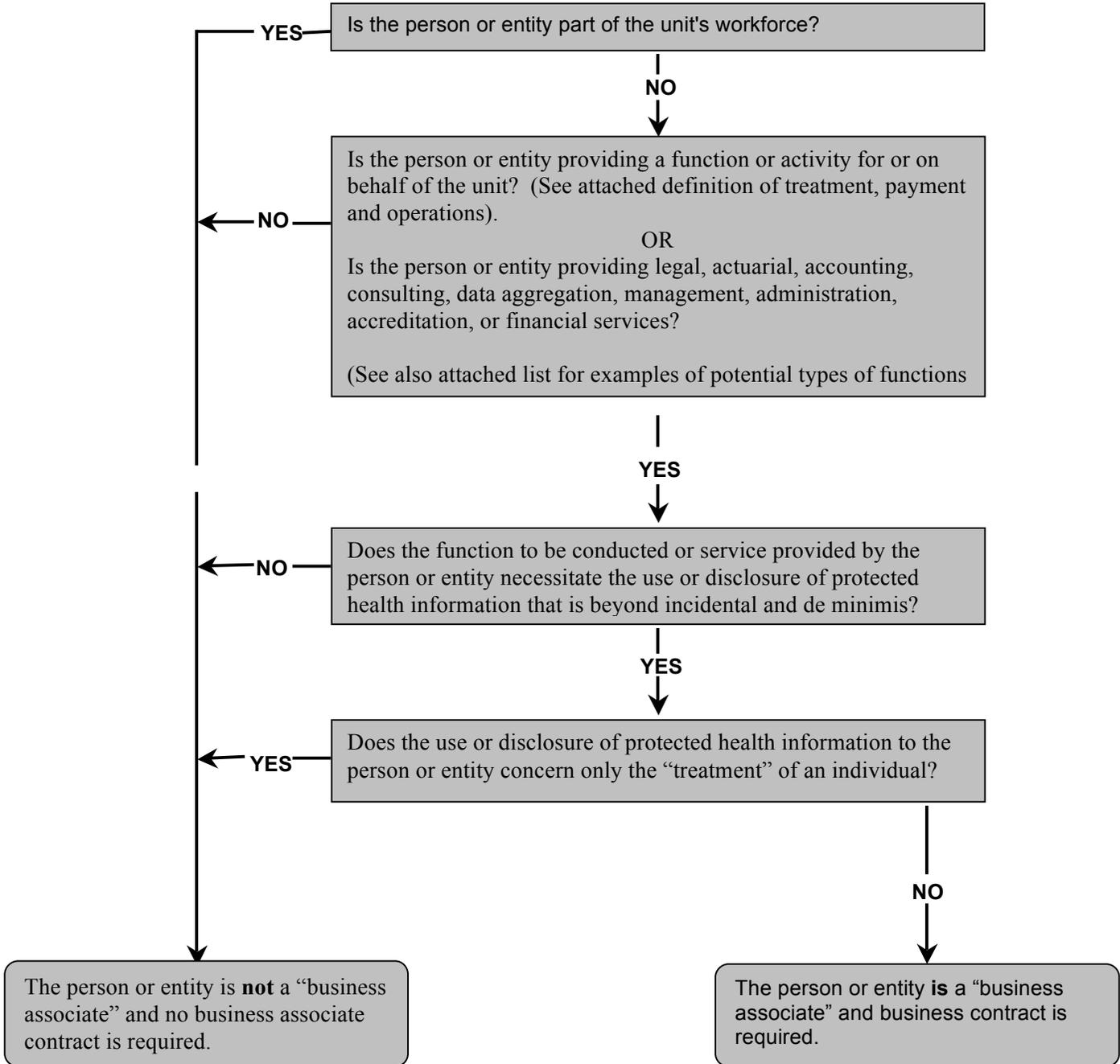
VII. EXHIBITS

- A. Is a Person or Entity a “Business Associate” and Required to Enter Into a Written Business Associate Contract?
- B. Examples of Potential Business Associates
- C. Treatment, Payment and Health Care Operations
- D. Business Associates Agreement Involving the Access to Protected Health Information

<b>APPROVALS BY:</b>	<b>NAME:</b>	<b>SIGNATURE:</b>
President/CEO	James R. Gonzalez	
General Counsel	Paul Wermuth	
Interim Chief Compliance and Audit Officer	John W. Ras	

EXHIBIT A

**Is a Person or Entity a “Business Associate” and Required to Enter Into a Written Business Associate Contract?**



## EXHIBIT B

### Examples of Potential Business Associates

(This is not an all-inclusive list, nor is every arrangement listed necessarily a business associate. Use the attached flowchart and policy and procedure to analyze whether the relationship is a business associate relationship under HIPAA. Contact General Counsel for assistance in the analysis.)

Accountants
Accounting services and firms
Accreditation services
Actuarial services
Actuarial specialists
Adjudication services
Administrative services
Advertisers
Architects, builders, and contractors
Asset-based lenders to healthcare facilities
Attorneys
Auditors
Billing service companies
Bulk mailing services
Care management programs
Civic groups and other local groups help out on ad hoc basis with patients who are hospitalized for a traumatic event or complicated illness (e.g., Shrine Temples, Ronald McDonald House)
Coding providers and experts
Community health management information systems
Computer maintenance services and companies
Consulting services
Contract Research Organization – An entity used by pharmaceutical and device manufactures to monitor clinical research trials
Copy services
Data aggregation services
Device manufactures
Document storage and destruction vendors
Financial service companies
Government health data systems
Hardware vendors
Healthcare consultants (e.g., risk management, information technology, billing, coding and management)
Hospital associations (National and State)
HVAC vendors
Independent contractors

EXHIBIT B (continued)

Examples of Potential Business Associates

Independent service organizations (ISO) offering clinical/biomedical engineering services
Insurance brokers
Interpreter services (both deaf and foreign language)
Janitorial services; waste disposal and recycling services and companies
Law firms, its staff and employees
Lobbyists
Mailing houses
Maintenance contractors
Management services
Marketing services or firms
Medical equipment testing/ repair services
Medical or Physician associations (National and State)
Medical record moving companies
Medical record storage companies
Medical record transcription services
Medical software vendors
Microfilm conversion providers
Organ and Tissue Banks
Organ procurement organization
Outsourced document shredders
Patient advocates
Pharmaceutical companies
Pharmaceutical manufacturers
Pharmaceutical representatives
Plasma Donor Centers
Printing companies (ID cards and other member materials)
Private health data systems
Professional liability insurance carriers
Recycling services and companies
Software vendors
Sperm Banks
Temporary Staffing Companies
Third-party administrators
Trade associations
Utilization management vendors
Value added networks
Vendors to business associates if involving the disclosure of independently identifiable health information
Waste disposal services and companies

## EXHIBIT C

### Treatment, Payment and Health Care Operations

- A. “Treatment”** - the provision, coordination, or management of health care and related services by one or more health care providers, including:
1. the coordination or management of health care by a health care provider with a third party;
  2. consultation between health care providers relating to a patient; or
  3. the referral of a patient for health care from one health care provider to another.
- B. “Payment”** - the activities undertaken to obtain payment for the provision of healthcare; and relates to the individual to whom health care is provided and includes, but is not limited to:
1. Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;
  2. Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;
    - a. Obtaining information about the location of the individual is a routine activity to facilitate the collection of amounts owed and the management of accounts receivable, and, therefore, would constitute a payment activity.
    - b. Debt collection is recognized as a payment activity.
  3. Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
  4. Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and
  5. Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of reimbursement:
    - a. Name and address;
    - b. Date of Birth;
    - c. Social Security Number;
    - d. Payment history;
    - e. Account number; and
    - f. Name and address of the health care provider and/or health plan.
- C. “Health Care Operations”** - any of the following activities:
1. Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contracting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

## EXHIBIT C (continued)

### Treatment, Payment and Health Care Operations

2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance,, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care providers, accreditation, certification, licensing, or credentialing activities;
3. Conducting or arranging for medical review, legal services and auditing functions, including fraud and abuse detection and compliance programs;
4. Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
5. Business management and general administrative activities of UH, including, but not limited to:
  - a. Resolution of internal grievances;
  - b. Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity.